IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.265 OF 2002

M/s. Aarti Cable & Compounds Pvt. Ltd. ..Petitioner.

Vs.

M/s. M.K. Industries ..Respondent..

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Mr. Subhash Jha with Ms. Laxmi Menon i/b Law Global for the Petitioner.
Mr. D.R. Sharma & Mr. B.L. Gandhi i/b K.C. Pandey for the Respondent.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

16th June, 2007.

P.C. :

1. The Petitioner sold, supplied and delivered to the Respondent PVC Resin between 1996-97 and 2000-01 in respect where of an account was maintained. By several letters inter alia dated 13th May, 2001, the Respondent was called upon to repay the outstandings. On 20th June, 2001 the Respondent sought a justification of the outstanding claim in response to which the Petitioner forwarded a statement of account on 10th July, 2001. A notice of demand dated 13th May, 2001 was also issued with reference to the provisions of Sections 433 and 434 of the

Companies Act, 1956. An affidavit in reply was filed at the stage of admission in which the receipt of supplies has not been denied, nor for that matter is the correctness of the statement of account. Only two defences have been urged, (i) that the claim is barred by limitation and (ii) that the goods sold, supplied and delivered were substandard. There is no merit in the defence that the claim is barred by limitation since the account shows that the last payment of Rs.50,000/- was made by the Respondent on 17th April, 2000 and the Petition was instituted on 10th October, 2001. As regards the defence that the goods were substandard there is not a single letter demonstrating either a complaint on the part of the Respondent in regard to the quality of goods or any reply to the statutory notice raising such a defence. There is, therefore, absolutely no bona fide defence to the claim for winding up.

2. At the hearing of the Company Petition the Respondent has stated before the Court through its counsel that should the Respondent be granted the facility of installments, the principal amount of Rs.7 lacs would be paid together with interest at the rate of

9% per annum. The interest computed in respect of the period from 2000 until date has been quantified at Rs.4.30 lacs. Hence, by consent both the learned counsel have requested the Court to pass the following order :

i) The Petition for winding up shall stand dismissed in the event that the Respondent pays to the Petitioner an amount of Rs.11.30 lacs in installments of Rs.50,000/- per month in the manner indicated hereinafter together with interest at the rate of 9% per annum on the principal sum of Rs. 7 lacs on a reducing balance. The first of the payments shall be made on or before 7th July, 2007 while the payments for the subsequent months shall be made on or before the 7th day of each succeeding month;

ii) In the event that the Respondent commits any two defaults in the payment of the outstanding dues, the Petition for winding up shall stand absolute in terms of prayer clause (a). Counsel appearing for the Petitioner shall furnish to the Company Registrar intimation of default failing which it shall be presumed that all the payments as

required have been made in accordance with the time schedule prescribed and that the dues have been settled in accordance with the terms of this order. The Company Petition shall stand disposed of.